

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KEITH PAUL BIRD,
 Plaintiff(s),

v.

JULIE WILLIAMS, et al.,
 Defendant(s).

Case No. 2:24-cv-00120-JAD-NJK

ORDER

[Docket No. 25, 26, 27, 28, 32]

Pending before the Court are various filings, which the Court addresses as follows.

The parties stipulate to allow Plaintiff to file an amended complaint to substitute Omar Sanchez in place of Gustavo Sanchez, as well as to properly identify Defendants Rayford III and De Jesus, Docket No. 32 at 4-5, which is **GRANTED**. Plaintiff must file an amended complaint making those changes by November 27, 2024. In light of this ruling, the improperly filed proposed amended complaint (Docket No. 27) is **STRICKEN** and the motion to substitute Defendant (Docket No. 28) is **DENIED** as moot. In addition, it does not appear that a further application to proceed *in forma pauperis* is necessary, so that application (Docket No. 26) is **DENIED** as unnecessary.

Plaintiff also seeks entry of default against Defendants DJ, Rayford, Pena, and Kipperman.¹ Docket No. 25. The parties have stipulated to withdraw the default request as it relates to DJ and Rayford. Docket No. 32 at 5. As to Pena and Kipperman, entry of default requires a showing that a defendant failed to plead or otherwise defend. *See* Fed. R. Civ. P. 55(a). The duty to plead and appear is not triggered until service has been effectuated, however. *See, e.g.,* Fed. R. Civ. P. 12(a)(1). Although the declaration filed in support of the request for entry of default alludes to

¹ The parties spell Kipperman's last name differently, but the Court spells it herein as "Kipperman."

1 service as evidenced in the “Proof of Service file,” Docket No. 24 at 1,² it does not attach such
 2 documentation and the Court has not located any such proof of service on the docket. On May 6,
 3 2024, the Nevada Attorney General’s Office refused to accept service for Kipperman and Pena.
 4 Docket No. 10. As to Kipperman, that filing indicated that his last known address was being filed
 5 under seal. *See id.* at 1. As to Pena, that filing indicated that defense counsel could not identify
 6 the first name for “Pena.” *Id.* at 2. At that point, it was incumbent on Plaintiff to take action:

7 If service cannot be accepted for any of the named defendant(s),
 8 Plaintiff shall file a motion identifying the unserved defendant(s),
 9 requesting issuance of a summons, and specifying a full name and
 10 address for the defendant(s). For the defendant(s) as to which the
 Attorney General has not provided last-known-address information,
 Plaintiff shall provide the full name and address for the defendant(s).

11 Docket No. 9 at 2. The Court has not located any such efforts by Plaintiff for service on Kipperman
 12 and Pena. Moreover, the time to effectuate service expired long ago. *See* Docket No. 9 at 2
 13 (“Service must be perfected no later than July 15, 2024”); *see also* Fed. R. Civ. P. 4(m). As such,
 14 the Court **DENIES** without prejudice the request for entry of default. Plaintiff is **ORDERED** to
 15 show cause in writing, no later than November 27, 2024, why Kipperman and Pena should not be
 16 dismissed for lack of service.

17 In summary, the Court **ORDERS** as follows:

- 18 • The stipulation for various relief (Docket No. 32) is **GRANTED** as stated above.
- 19 • The proposed amended complaint (Docket No. 27) is **STRICKEN** as improvidently filed,
 20 but Plaintiff has leave to file an amended complaint to substitute Omar Sanchez in place of
 21 Gustavo Sanchez, as well as to properly identify Defendants Rayford III and De Jesus.
 22 That amended complaint must be filed by November 27, 2024.
- 23 • The motion to substitute defendant (Docket No. 28) is **DENIED** as moot in light of the
 24 above.
- 25 • The application to proceed *in forma pauperis* (Docket No. 26) is **DENIED** as unnecessary.

27 ² Although not entirely clear, it appears Plaintiff is referencing the notice of acceptance of
 28 service. *See* Docket No. 24 at 1 (citing Docket No. 10). As discussed below, that filing shows
 that service was not accepted as to Kipperman and Pena. Docket No. 10 at 1-2.

- The request for entry of default (Docket No. 25) is **DENIED** as withdrawn as to DJ and Rayford and is **DENIED** without prejudice for failure to show service as to Kipperman and Pena.
- Plaintiff is **ORDERED** to show cause in writing, no later than November 27, 2024, why Kipperman and Pena should not be dismissed for lack of service.

IT IS SO ORDERED.

Dated: November 6, 2024



Nancy J. Koppe
United States Magistrate Judge